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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,587	09/21/2001	Kirk W. Skeba	42390P11693	5439

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EXAMINER

GELIN, JEAN ALLAND

ART UNIT

PAPER NUMBER

2688

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/960,587	Applicant(s) SKEBA, KIRK W.	
	Examiner Jean A. Gelin	Art Unit 2688	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-23.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

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DETAILED ACTION

1. This is in response to the Applicant's arguments filed on January 11, 2006 in which claims 1-23 are currently pending.

In response to the double patenting rejection, the Applicant argues a terminal disclaimer will be filed upon resolution of the prior art rejections. Therefore the obviousness-type double patenting will be withdrawn upon filing a terminal disclaimer.

The Applicant further argues that Watanabe does not disclose comparing a first ID with a second ID to a computer system and certifying a first software-defined radio for operation if the first ID matches the second ID. The Applicant further argues that Watanabe teaches an encryption process not a certification process. However, the Examiner disagrees with the preceding assertion. Watanabe teaches a process for approving a software-defined radio (paragraphs 56-60 and 63-66), wherein Watanabe teaches comparing the resultant code (i.e., first ID) with the added code (i.e., second ID) and using the software in the case of coincidence. In addition, Watanabe also teaches a technique to compare a measured value (read as a second ID) obtained from a measurement circuit with information of the specification criterion (read as a first ID) at a computer system from a server (100, figure 13) via a transmission medium, and to approve the software defined radio for operation if the first IF matches the second I.D ((0063)). Watanabe teaches clearly comparing two Ids for a match to approve software-defined radio. Thus, the combination of Souissi and Watanabe teaches the claimed limitations.

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In response to applicant's arguments that neither Souissi nor Watanabe discloses or suggests certifying a first software-defined radio for operation if the IDs matched, it is noted that Watanabe teaches the radio specifies the ID and transmits a downloading request to a server so that the server receives the request for certifying a first software defined radio ((0059)). Thus, one skill in the art would recognize that Watanabe teaches the claimed limitations.

The Applicant further argues that claims 2-16 are allowable because they depend from claim 1. Since claim 1 is rejected, the rejections of claims 2-16 are maintained.

The Applicant further argues that claim 17 is allowable for the reasons described in claim 1. Given that claim 1 is rejected, therefore the rejection of claim is maintained.

The Applicant further argues that Watanabe does not disclose the transmission of a request to a server to download software corresponding to an ID transmitted along with the request; in response the server transmits the request. However, the Examiner disagrees with the preceding assertions. Watanabe teaches a list of software which can be downloaded by a radio, the software ID is added in the header; the radio transmits a download request to the server. Inherently, the software ID is transmitted in performing the functions described in paragraphs 58-59 of Watanabe. Therefore the rejections of claims 20-23 are maintained.

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on (571) 272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGelin
January 26, 2006

JEAN GELIN
PRIMARY EXAMINER

Jean Allard Gelin